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C.M.A.No.69 of 20



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.No.69 of 2023

Chitra

.. Appellant

Vs.

1. S.Aswin

2.United India Insurance Co., Ltd,
Branch Office, 178, Dr.Nanjappa road,
Opp. Chidambaram Park,
Coimbatore- 641 018.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the 30% negligence fixed against the appellant and enhance the award passed by Special District Judge, Erode (Motor Accident Claims Tribunal) dated 22.02.2021 made in M.A.C.T.O.P.No.827 of 2017 from Rs.2,48,386/- to Rs.4,48,386/- (As restricted by the Appellant) as against the claim of Rs.8,12,000/- with interest and cost.

For Appellant : Mr.K.V.Muthu Visakan
For Respondents : R1- Set exparte
Mrs.Sree Vidhya (R2)



JUDGMENT

Challenging the fixation of 30% contributory negligence against the Appellant and the quantum of compensation awarded by Motor Accident Claims Tribunal, Special District Judge, Erode vide award dated 22.02.2021 made in M.A.C.T.O.P.No.827 of 2017, the present Civil Miscellaneous Petition has been filed by the Appellant/Claimant.

2.The Appellant is the Claimant in M.C.O.P.No.827 of 2017 on the file of the Motor Accident Claims Tribunal, Special District Judge, Erode. He filed the above said claim petition, claiming a sum of Rs.8,12,000/- as compensation on account of the injuries sustained by her in an accident that took place on 08.03.2017.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the rider of the Yamaha bike bearing Registration No.TN-66 J 2340, belonging to the first respondent herein and the carelessness of the Appellant/Claimant who is the rider of moped bearing Registration No.TN 36 C 1485 and that apart found that the Appellant/Claimant was not in possession of a valid licence and insurance policy and thereby fixed



contributory negligence of 30% on the Appellant/Claimant and directed the 2nd Respondent-Insurance Company to pay a sum of Rs.2,48,386/- (after deducting 30% contributory negligence), with interest @ 9% as compensation to the Appellant.

4. Not being satisfied with the amounts awarded by the Tribunal and being aggrieved with the fixation of contributory negligence of 30% on the Appellant, the Appellant has come out with the present appeal seeking enhancement of compensation.

5. The learned counsel for the Appellant submitted that though the Tribunal has fixed 30% contributory negligence on the Appellant on the ground that she did not possess the valid driving licence and Insurance policy as well as for the negligence of the Appellant, the Tribunal has not observed anything regarding the negligence of the Appellant. He further submitted that mere non possessing of valid license by the injured Claimant does not imply that the Claimant has also contributed for the accident. He further submitted that the Tribunal has fixed only a sum of Rs.5,000/- per percentage of disability while assessing the compensation towards disability for the accident that occurred in the year 2017, which is very low. He further



submitted that no compensation was awarded towards Loss of Amenities and the overall compensation awarded by the Tribunal is very low and therefore seeks for enhancement.

6. It is the further contention of the learned counsel for the Appellant that due to the aforesaid accident, appellant sustained compound and comminuted fracture bones in right leg, calcaneal fracture right leg, lacerated injury in right knee and multiple injuries, for which she took treatment as inpatient for one month in Bharani-Paventhan Multispeciality hospital at Erode but the Tribunal without considering the same has awarded meager compensation towards the Loss of earnings during treatment period.

7. In reply, the learned counsel appearing for the 2nd respondent-Insurance Company submitted that the Tribunal has given a categorical finding that the Appellant/Claimant while attempting to cross the road, without noticing the Yamaha bike, which was coming from east to west and that apart taking note of the fact that the Appellant/Claimant did not possess the valid licence and insurance policy at the time of accident has rightly fixed 30% contributory negligence on the part of the appellant. He further submitted that the Appellant sustained only both bone fracture for which the



disability assessed by the Doctor @ 30% is very high and it should only be 10%. He further submitted Tribunal on considering the oral and documentary evidence has awarded reasonable compensation and therefore the same does not warrant interference.

8. Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 2nd Respondent-Insurance Company and perused the entire materials on record.

9. Insofar as fixation of 30% contributory negligence on the part of the Appellant/Claimant is concerned, the Tribunal fixed 70% on the rider of the Yamaha bike bearing Registration No.TN 66 J 2340 and 30% contributory negligence on the Appellant, who is the rider of the moped vehicle bearing Registration No.TN 36 C 1485 for not possessing valid driving licence and insurance policy.

10. A perusal of the award passed by the Tribunal would go to show that the Tribunal on relying upon the Judgment of this Court in the case of ***Krishnamurthy Vs. S.Govindan and another*** reported in **2020 (2) TN MAC 317** has fixed 10% contributory negligence for non possessing of valid



driving licence but fixed overall contributory negligence @ 30% for non possessing of valid driving licence, no insurance policy as well as for overall negligence on the part of the Claimant. This Court can easily construe that for non possessing of valid driving license, non possessing of insurance policy and for negligence on the part of the Claimant, 10% contributory negligence has been fixed for each cause by the Tribunal. As far as fixation of 10% contributory negligence on the Claimant is concerned for non noticing of Yamaha Bike coming from east to west direction, this Court is not inclined to interfere with the same. As far as fixation of 20% contributory negligence for non possessing of valid driving license and insurance policy, this Court is of the view that the non-possession of the same cannot be construed to be negligence, which has contributed to the accident. Hence, this Court is inclined to set aside 20% of the contributory negligence fixed against the Claimant and accordingly modify the contributory negligence fixed on the Appellant/Claimant from 30% to 10% .

11. As far as the quantum of compensation awarded by the Tribunal is concerned, the Tribunal has taken only a sum of Rs.5,000/- per percentage while assessing the compensation towards disability for the accident that occurred in the year 2017 which is very low. Therefore, this Court is



inclined to fix a sum of Rs.6,000/- per percentage of disability and by fixing the same, the compensation towards Disability comes to Rs.1,98,000/- (33x6000) and the compensation awarded under the head **Disability** stands enhanced from Rs.1,65,000/- to Rs.1,98,000/-. Considering the nature of injuries sustained , this Court is inclined to award a sum of Rs.10,000/- under the head Loss of Amenities. According a sum of Rs.10,000/- is awarded under the head **Loss of Amenties**. Since, the Tribunal has awarded Losss of Income only for 4 months this Court taking note of the nature of injuries and the period of treatment, is inclined to award Loss of Income for 6 months. Accordingly the compensation under the head **Loss of Income during treatment period** is enhanced from Rs.36,000/- to Rs.54,000/-. The interest awarded by the Tribunal at 9% is excessive and the same is modified to 7.5%.

12. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is re-determined as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Pain ad suffering	45,000/-	45,000/-	Confirmed
2.	Attendant charges	10,000/-	10,000/-	Confirmed



S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
3.	Transportation	10,000/-	10,000/-	Confirmed
4.	Extra Nourishment	10,000/-	10,000/-	Confirmed
5.	Medical Expenses	78,837/-	78,837/-	Confirmed
6.	Loss of Income during treatment period	36,000/-	54,000/-	Enhanced
7.	Disability	1,65,000/-	1,98,000/-	Enhanced
8.	Loss of Amenities	NIL	10,000/-	Granted
	Total	Rs.3,54,837/-	Rs.4,15,837/-	Enhanced by
	Less:	Rs.1,06,451/-	Rs.41,584/-	Rs.1,25,867/-
	Contributory negligence	Rs.2,48,386/-	Rs.3,74,253/-	

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at **Rs.2,48,386/-** is hereby enhanced to **Rs.3,74,253/-** with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd Respondent-Insurance Company is directed to deposit the award amount now determined by this Court, along with interest and costs, less the amount already deposited, if any, within a period of **six weeks** from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.827 of 2017 on the file of the Motor Accident Claims Tribunal, (Special District Judge), Erode. On such deposit



being made, the Tribunal is directed to transfer the Award amount directly to the Bank account of the Appellant/Claimant through RTGS, within a period of **three weeks** thereafter. The Claimant is directed to pay necessary Court fee, if any on the enhanced compensation. However, it is made clear that if there is any delay in filing the C.M.A. and in case of any earlier order by this Court, depriving interest for the period of delay in question, the interest portion for that period should be excluded for the purpose of granting interest. No costs.

18.03.2024

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Index : Yes / No

Internet : Yes / No

To

1. United India Insurance Co., Ltd,
Branch Office, 178, Dr.Nanjappa road,
Opp. Chidambaram Park,
Coimbatore- 641 018.
- 2 . The Motor Accident Claims Tribunal,
Special District Judge, Erode.
- 3.The Section Officer,
VR Section,
High Court,
Madras.



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KRISHNAN RAMASAMY, J.

arr

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